

FAHEY GROUP MINES, INC.

IBLA 81-894

Decided September 24, 1981

Appeal from decision of the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void. I MC 29624 through I MC 29641.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute an abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision

of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

3. Administrative Procedure: Adjudication--Evidence: Generally-- Evidence: Presumptions--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

Although at common law, abandonment of a mining claim can be established only by evidence demonstrating that it was the claimant's intention to abandon it and that he in fact did so, in enacting the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1744 (1976)) Congress specifically placed the burden on the claimant to show, by his compliance with the Act's requirements, that the claim has not been abandoned and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon his claim may not be considered in such cases.

4. Administrative Authority: Generally--Constitutional Law: Generally--Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Recordation

Department of the Interior, as an agency of the executive branch of the Government, is without jurisdiction to consider whether the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

5. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

6. Administrative Procedure: Hearings--Constitutional Law: Due Process--Rules of Practice: Hearings

Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final.

APPEARANCES: Merrily Munther, Esq., Boise, Idaho, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Fahey Group Mines, Inc., has appealed the decision of the Idaho State Office, Bureau of Land Management (BLM), dated July 1, 1981, declaring 18 unpatented lode mining claims, I MC 29624 through I MC 29641, 1/ abandoned and void for failure to file on or before December 30, 1980, evidence of annual assessment work or a notice of intention to hold the claims, as required by 43 CFR 3833.2.

In its statement of reasons, appellant supports its appeal with the following arguments:

1. Appellant urges that it substantially complied with section 314(a) of the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744(a) (1976), and the implementing regulation, 43 CFR 3833.2, by actually performing in good faith the annual assessment work and recording evidence thereof in the county recorder's office.

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1/ Amended locations for all claims were made on July 25, 1934, and filed in the recording office of Shoshone County, Idaho.

<u>Serial No.</u>	<u>Claim Name</u>
IMC 29624	Humming Bird
IMC 29625	Rose Bud
IMC 29626	Boxer
IMC 29627	Good Luck
IMC 29628	Pet
IMC 29629	Pullman
IMC 29630	Twilight
IMC 29631	St. Anthony
IMC 29637	Alice
IMC 29638	Wild Cat
IMC 29639	Cub
IMC 29640	Day Dream
IMC 29641	White Fir

2. Appellant reports that it was never notified that the failure to file the documents at issue would result in a conclusive presumption of abandonment.

3. Appellant argues that the effect of section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), constitutes an arbitrary and unreasonable exercise of the police power in violation of Fifth Amendment guarantees.

4. Appellant contends that section 314 of FLPMA, *supra*, impairs the contract formed when appellant accepted "the offer of the United States to convey title to minerals and to lands in which they are discovered upon fulfillment of conditions set forth in the Mining Law of 1872" and thus abridges Article I, § 10, of the United States Constitution and equivalent Fifth Amendment protection.

5. Finally, appellant asserts that the declaration of abandonment without notice or opportunity for a hearing violated the minimum requirements of due process.

Appellant has also requested that a hearing be ordered for the purpose of taking evidence on the questions of whether assessment work was performed for the claims in 1980, and whether appellant intended to abandon the claims at issue.

[1] Under section 314(a) of FLPMA, *supra*, the owner of a mining claim located on or before October 21, 1976, must file notice of intention to hold the claim or evidence of the performance of annual assessment work on the claim in the proper BLM office on or before October 22, 1979, and prior to December 31 of each calendar year thereafter. This requirement is mandatory, not discretionary, and failure to comply is conclusively deemed to constitute abandonment of the claim by the owner and renders the claim void. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); James V. Brady, 51 IBLA 361 (1980).

[2, 3, 4] The Board responded to arguments similar to those presented here in Lynn Keith, *supra*. With respect to the conclusive presumption of abandonment and appellant's argument that the intent not to abandon was manifest, we stated:

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

[3] Appellant also argues that the intention not to abandon these claims was apparent \* \*. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered.

53 IBLA at 196-97, 88 I.D. at 371-72.

As for the constitutionality of section 314 of FLPMA, *supra*, and the application of that statute by Departmental regulation, we held:

[4] Appellant's challenge of the statute and regulations cannot be sustained here. Essentially, the regulations merely mirror the statute and, to the extent that they have been considered by the courts, they have been upheld. See Topaz Beryllium Co. v. United States \* \* \* [649 F.2d 775 (10th Cir. 1981)]; Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, *supra*. In any event, it has frequently been held that an appeals board of this Department has no authority to declare a duly promulgated regulation invalid. Exxon Co., U.S.A., 45 IBLA 313 (1980); cf. Garland Coal and Mining Co., 52 IBLA 60 (1981). Nor may such a regulation be waived by the Department. Marvin E. Brown, 52 IBLA 44 (1981), and cases therein cited. With reference to the statute, this Board adheres to its earlier holdings that the Department of the Interior, being an agency of the executive branch of the Government, is not the proper forum to decide whether an act of Congress is constitutional. Alex Pinkham, 52 IBLA 149 (1981), and cases therein cited. Jurisdiction of such an issue is reserved exclusively to the judicial branch.

53 IBLA at 197-98, 88 I.D. at 372.

Appellant urges that Topaz Beryllium Co. v. United States, *supra*, stands for the proposition that once the Secretary of the Interior has been put on notice of the existence of a claim, that claim cannot be declared abandoned and void for failure to comply with the filing requirements of the statute without notice and an opportunity to comply. Appellant urges that BLM had notice of the existence of its claims from the notices of location which were properly filed in 1979 and therefore BLM should have afforded appellant notice and an opportunity to file before declaring the claims abandoned. We disagree with appellant's

interpretation of Topaz Beryllium Co. v. United States, *supra*, however, because appellant has failed to note a critical distinction between that case and the case herein. In Topaz Beryllium Co. the filing requirements at issue were purely regulatory requirements which expanded the express requirements of section 314 of FLPMA, *supra*. The court held that the conclusive presumption of abandonment would not apply in the case of failure to comply with such additional regulatory requirements absent a notice of deficiency and opportunity to comply. See Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). Here, however, we have a failure to comply with an express statutory requirement, and the consequences for failure to comply with such requirement may not be waived by this Department. Lynn Keith, *supra*.

[5] BLM was under no obligation to notify appellant of the need for a 1980 filing. Those who deal with the Government are presumed to have knowledge of the law and the regulations duly promulgated pursuant thereto. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Donald H. Little, 37 IBLA 1 (1978); 44 U.S.C. §§ 1507, 1510 (1976). The responsibility for complying with the recordation requirements rested with appellant.

[6] Due process does not require notice and a right to be heard prior to the initial decision in every case where an individual may be deprived of property so long as the individual is given notice and an opportunity to be heard before the deprivation becomes final. Appeal to this Board satisfies due process requirements. George H. Fennimore, 50 IBLA 280 (1980); Dorothy Smith, 44 IBLA 25 (1979); H. B. Webb, 34 IBLA 362 (1978). Appellant's request for a hearing is denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed.

Douglas E. Henriques

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Bruce R. Harris, Administrative Judge.

